IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2560 OF 2007.

The Regional Director, Employees
State Insurance Corporation,
Lower Parel, Mumbai 400 013. ... Appellant.

Versus.

M/s.Precimax Engineers Ltd.
having their works at Plot No.A-2,
MIDC Area, Badlapur, Dist.Thane. ... Respondent.

Shri P.M.Palshikar for the Appellant.

Shri Rajesh Gehani for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 30th November, 2007.

ORAL JUDGMENT.:

1. Heard the Advocates appearing for the parties. The Appeal is admitted on substantial question of law arising out of ground (d) of the Memorandum of Appeal. The Advocate for the Respondent waives service. By consent, the Appeal is taken up for final disposal.

2. The Appeal has been preferred by the Employees State Insurance Corporation for challenging an order made by the Employees State Insurance Court (hereinafter referred to as "the trial Court") by which the Application made by the Respondent under section 75 of

the Employees State Insurance Act, 1948 (hereinafter referred to as "the said Act") has been allowed. The Application was made by the Respondent for challenging the order dated 24th September 1999 passed by the Appellant under section 45A of the said Act. By the impugned order, the Application has been allowed on the ground that the limitation/time limit of five years provided in the proviso to clause (b) of section 77(1-A) of the said Act will apply to the order undre section 45-A of the said Act. The learned trial Judge held that the claim for contribution ought to have been made by the Appellant-Corporation within a period of five years.

3. After having heard the learned Advocates appearing for the parties, I find that the trial Court has clearly committed an error by applying the aforesaid provision. The issue is not more res-integra in view of the decision of the Apex Court in the case of Employees State Insurance Corporation v/s. C.C.Santha Kumar (2007 III CLR 267). By the said decision, the Apex Court held that the period of limitation prescribed under the proviso to clause (b) of section 77(1-A) of the said Act cannot be applied to the order made under section 45A of the said Act. The Apex Court, however, held that the action has to be taken by the Corporation by raising a demand within a reasonable time. If it is found that the demand is not raised within the reasonable time, the

said demand can be held to be illegal.

4. In the present case, the learned trial Judge has allowed the application filed by the Respondent on the ground that the period of limitation of five years is applicable. The said view is erroneous. Therefore, the impugned order will have to be set aside the matter the will have to be remanded to the trial Court. The trial Court will have to decide whether the demand made by the Appellant was within a reasonable time. If the trial Court finds that the demand is made within a reasonable period of time, the trial Court will have to consider the challenge to the order under section 454 on merits.

5. Hence the following order is passed:

i) The impugned Judgment and order dated 29th July 2006 is quashed and set aside. The Application (ESI) No.4 of 1999 is restored to file.

ii) The parties are directed to appear before the trial Court on 21st January 2008 at 11.00 a.m.

iii) The trial Court will decide the Application afresh in the light of the

observations made in this Judgment.

iv) All contentions of the parties on merits are expressly kept open.

v) The First Appeal is partly allowed in the above terms with no order as to costs.

vi) The parties to act on an authenticated copy of this order.

Judge.